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HOUSE BILL 394

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO STATE REVENUE; IMPOSING A HEALTH INSURANCE PREMIUM SURTAX ON CERTAIN INSURANCE PREMIUMS; RECONCILING CONFLICTING AMENDMENTS TO A CERTAIN SECTION OF THE NMSA 1978; CHANGING THE APPLICABILITY DATE OF CERTAIN PROVISIONS OF THE PREMIUM TAX.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE [~~DEPARTMENT~~]  
DIVISION COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND

CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code, except for money received from the

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1 health insurance premium surtax imposed by Subsection C of  
2 Section 59A-6-2 NMSA 1978, shall be paid monthly to the state  
3 treasurer and [~~by him~~] credited to the fund. On or before June  
4 30 of each year, the state treasurer shall transfer to the  
5 general fund any balance in the law enforcement protection fund  
6 in excess of one hundred thousand dollars (\$100,000) that is  
7 not obligated and that is in excess of the amount certified by  
8 the division to be distributed from that fund."

9 Section 2. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 102, as amended by Laws 2003, Chapter 14,  
11 Section 18 and by Laws 2003, Chapter 58, Section 1) is amended  
12 to read:

13 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

14 A. The premium tax provided for in this section  
15 shall apply as to the following taxpayers:

16 (1) each insurer authorized to transact  
17 insurance in New Mexico;

18 (2) each insurer formerly authorized to  
19 transact insurance in New Mexico and receiving premiums on  
20 policies remaining in force in New Mexico, except that this  
21 provision shall not apply as to an insurer that withdrew from  
22 New Mexico prior to March 26, 1955;

23 (3) each plan operating under provisions of  
24 Chapter 59A, Articles 46 through 49 NMSA 1978;

25 (4) each property bondsman, as that person is

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1 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
2 received as security or surety for a bail bond in connection  
3 with a judicial proceeding, which consideration shall be  
4 considered "gross premiums" for the purposes of this section;  
5 and

6 (5) each unauthorized insurer that has assumed  
7 a contract or policy of insurance directly or indirectly from  
8 an authorized or formerly authorized insurer and is receiving  
9 premiums on such policies remaining in force in New Mexico,  
10 except that this provision shall not apply if a ceding insurer  
11 continues to pay the tax provided in this section as to such  
12 policy or contract.

13 B. Except as provided in Subsection E of this  
14 section, each such taxpayer shall pay in accordance with this  
15 subsection [~~three~~] a premium tax of three and three-thousandths  
16 percent of the gross premiums and membership and policy fees  
17 received by it on insurance or contracts covering risks within  
18 this state during the preceding calendar year, less all return  
19 premiums, including dividends paid or credited to policyholders  
20 or contract holders and premiums received for reinsurance on  
21 New Mexico risks.

22 C. In addition to the premium tax imposed pursuant  
23 to Subsection B of this section, each taxpayer described in  
24 Subsection A of this section that transacts health insurance in  
25 New Mexico or is a plan described in Chapter 59A, Article 46 or

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1 47 NMSA 1978 shall pay a health insurance premium surtax of one  
2 percent of the gross health insurance premiums and membership  
3 and policy fees received by it on health insurance or contracts  
4 covering health risks within this state during the preceding  
5 calendar year, less all return health insurance premiums,  
6 including dividends paid or credited to policyholders or  
7 contract holders and health insurance premiums received for  
8 reinsurance on New Mexico risks. The health insurance premium  
9 surtax shall not be imposed on existing contracts that are not  
10 renewed before October 1, 2004. Except as provided in this  
11 section and Section 59A-6-5 NMSA 1978, all references in the  
12 Insurance Code to the premium tax shall include both the  
13 premium tax and the health insurance premium surtax.

14           D. For each calendar quarter, an estimated payment  
15 of the premium tax and the health insurance premium surtax  
16 shall be made on April 15, July 15, October 15 and the  
17 following January 15. The estimated payments shall be equal to  
18 at least one-fourth of either the payment made during the  
19 previous calendar year or eighty percent of the actual payment  
20 due for the current calendar year, whichever is greater. The  
21 final adjustment for payments due for the prior year shall be  
22 made with the return, which shall be filed on April 15 of each  
23 year, at which time all taxes for that year are due. Dividends  
24 paid or credited to policyholders or contract holders and  
25 refunds, savings, savings coupons and similar returns or

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1 credits applied or credited to payment of premiums for  
2 existing, new or additional insurance shall, in the amount so  
3 used, constitute premiums subject to tax under this section for  
4 the year in which so applied or credited. ~~[except that:~~

5 ~~(1)]~~ E. Notwithstanding the rate imposed pursuant  
6 to Subsection B of this section, as to every insurer that  
7 throughout such preceding calendar year had at least forty  
8 percent of its admitted assets invested in New Mexico  
9 investments, as the same are defined in Subsection ~~[G]~~ F of  
10 this section, the rate of ~~[such]~~ the premium tax shall be nine-  
11 tenths percent in lieu of three and three-thousandths percent.  
12 ~~[and~~

13 ~~(2) effective January 1, 1992, the rate shall~~  
14 ~~be one and four-tenths percent; effective July 1, 1992, the~~  
15 ~~rate shall be one and nine-tenths percent; effective January 1,~~  
16 ~~1993, the rate shall be two and four-tenths percent; and~~  
17 ~~effective July 1, 1993 and thereafter, the rate shall be three~~  
18 ~~percent.~~

19 ~~G.]~~ F. New Mexico investments for the purpose of  
20 Subsection ~~[B]~~ E of this section are defined as follows:

- 21 (1) real estate located within New Mexico;  
22 (2) bonds or obligations of New Mexico or of  
23 any county or other subdivision thereof;  
24 (3) bonds, debentures or secured obligations  
25 of any corporation that has fifty percent of its assets located

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1 within New Mexico;

2 (4) first mortgages secured by real estate  
3 located within New Mexico;

4 (5) deposits in state banks, national banks  
5 and trust companies having their principal place of business  
6 within New Mexico;

7 (6) policy loans to residents of New Mexico;  
8 and

9 (7) preferred and common stock of corporations  
10 having at least fifty percent of their assets located within  
11 New Mexico.

12 ~~[D-]~~ G. Nothing contained in Subsection ~~[G]~~ F of  
13 this section shall be construed to affect any provision of  
14 Chapter 59A, Article 9 NMSA 1978.

15 ~~[E-]~~ H. Exempted from the ~~[tax]~~ taxes imposed by  
16 ~~[Subsection B of]~~ this section are:

17 (1) premiums attributable to insurance or  
18 contracts purchased by the state or a political subdivision for  
19 the state's or political subdivision's active or retired  
20 employees; and

21 (2) payments received by a health maintenance  
22 organization from the federal secretary of health and human  
23 services pursuant to a contract issued under the provisions of  
24 42 U.S.C. Section 1395 mm(g)."

25 Section 3. Laws 2003, Chapter 58, Section 3 is amended to

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1 read:

2 "Section 3. APPLICABILITY.--The provisions of this act  
3 apply to premiums received in the 2003 and subsequent calendar  
4 years; provided, however, that with respect to premiums owed  
5 prior to March 20, 2003, the provisions of Subsection E of  
6 Section 59A-6-2 NMSA 1978 in effect prior to the effective date  
7 of this 2003 act shall be applicable."

8 Section 4. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2004.

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